357.

SUPREME COURT OF THE UNITED STATES.

No. 29.

FRANCIS WEST ET AL., APPELLANTS,

VS.

WALTER BRASHEAR.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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Langtree & O'Sullivan, Print.

857.

Caption.

Pleas before the Honourable John Catron and Thomas B. Monroe, Judges of the Eighth Circuit Court of the United States of America, in and for the Kentucky District, held at the capitol, in the town of Frankfort, at the May Term of said Court, in the year 1837.

Be it remembered, that heretofore, to wit, at the November term, 1833, came Francis West, by his attorney, into the seventh circuit court of the United States, in and for the Kentucky district, and, on his motion, the following mandate from the Supreme Court of the United States was ordered to be entered, to wit:

WALTER BRASHEAR, *Complainant,*
against } In Chancery.
FRANCIS WEST, &c., *Defendants.*

Mandate Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honourable the Judges of the Circuit Court of the United States for the District of Kentucky, greeting:

Whereas lately in the circuit court of the United States for the district of Kentucky, before you, or some of you, in a cause between Walter Brashear, complainant, and Francis West and John Lapsley, Samuel Mifflin and Henry Nixon, trustees of said West, and Thomas M. Willing and Henry Nixon, executors of John Nixon, deceased, defendants, in chancery, the decree of the said circuit court was in the following words, to wit: "It is the opinion of the court that the complainant is, in equity, entitled to a credit or set-off against the judgments at law obtained against him, in the name of West, for the sum of four thousand and eleven dollars sixty-eight cents, being the amount of the judgment obtained against the complainant as special bail for West by George Anderson, but that the complainant is not entitled to any of the other credits or set-offs claimed in his bill and amended bill. It is therefore decreed and ordered, that the said four thousand and eleven dollars and sixty-eight cents, or so much thereof as will extinguish the same, shall be and is hereby credited and set off as payment on the 22d October, 1810, against the judgment at law, not against or not covered by the injunction bond, and that the residue of said four thousand and eleven dollars and sixty-eight cents, if any, and the costs of the complainant in this suit, shall be and is hereby credited and set off against so much of the other judg-

ment at law; the costs to be credited as of this day, and the clerk is hereby directed to tax the costs of this suit and make the necessary calculations, and enter said credits accordingly; and it is further decreed and ordered, that as to the residue of the said judgments or judgment, as the case may be, after entering and giving the credits as aforesaid, the complainant's injunction shall be, and the same is hereby dissolved, with ten per centum damages upon the amount of such residue at the time the injunction was granted, and that the complainants may proceed to recover by execution at law the said residue and also the damages aforesaid, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to an act of Congress in such cases made and provided, fully and at large appears.

And whereas, at the present term of January, in the year of our Lord one thousand eight hundred and thirty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel, on consideration whereof this court of opinion that there is error in the decree of the said circuit court in allowing to the said Walter Brashear credit for the money paid by him as special bail for Francis West at the suit of George Anderson, and also in refusing to allow the said Walter Brashear credit for the value of the ginseng shipped and sold by the said James Latimer, with the assent of the said assignees of Francis West, after the same had been attached in his hands by the said assignees: It is therefore decreed and ordered that the decree pronounced in this cause by the court of the United States, for the seventh circuit, in the district of Kentucky, be reversed and annulled, and that the cause be remanded to that court with instructions to perpetuate the injunction as to the sum which shall be equeal to the amount of the ginseng shipped and sold by the said James Latimer after the attachment sued out by Francis West for the use of Samuel Mifflin, John Lapseley, and Henry Nixon, assignees for the benefit of his creditors, was levied, to dismiss the bill as to the residue; and it is further ordered that the parties pay their own costs in this court—March 1st.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court, as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Hon. John Marshall, Chief Justice of the said Supreme Court, the second of January, in the year of our Lord one thousand eight hundred and thirty-three.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Order appointing J. H. Hanna Commissioner.

And afterwards, to wit, at the November term of the court afore-

said, in the year aforesaid, (1833,) on motion of defendant's counsel, it is ordered that John H. Hanna be appointed commissioner to make calculations and state the accounts between the parties according to the mandate of the Supreme Court, showing the difference in amount of decree as formerly made, and as now ordered, to enable the court to enter a final decree herein.

Or. for Depositions.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1835, (until which time this cause continued,) on motion of defendant's counsel, general leave is given to take depositions, and special leave to retake Latimer's deposition.

Report of Commissioner Submitted.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1835, came the commissioner, John H. Hanna, who was appointed to liquidate the account between the parties, and made his report.

Cause Recommitted to Com'r.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, came the complainant by his counsel, and, on his motion, it is ordered that this cause be, and it is hereby, recommitted to the master commissioner.

Leave to take Depositions.

And it is further ordered, that either party have leave to take depositions, upon giving to his adversary legal notice of the time and place of taking the same, subject, however, to the usual exceptions.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1836, (until which time this cause was continued,) "the commissioner, John H. Hanna, made his report," which is as follows, to wit:

Comm'r's Report.

"Pursuant to an order of the seventh circuit court of the United States in and for the Kentucky district, directing me to liquidate and adjust the account between the parties in pursuance of the decree of the Supreme Court, make the following report:

Walter Brashear,

To Francis West, Dr.

To amount of two judgments, - - -	$7,055 63
To interest from 28th May, 1808, to 11th May, 1809, 11 mos. and 13 ds., - - - - -	403 31
Amount of costs, - - - - -	33 25
	7,492 19

1809—May 11. By am't of Ginseng, shipped by Latimer and Redwood,		2,873 50
		4,618 69
Int. from 11th May, 1809, to 5th September, 1826, 17 years, 3 months, 25 days,		4,799 48
		9,418 17
1826—Sept. 5. By cash pd. R. Wickliffe, def'ts attorney,		2,000 00
		7,418 17
Interest on $4,618 17, from 5th Sept. 1826, to 18th August, 1827, is 11 months 13 days,		264 00
		7,682 17
1827—Aug. 18. By am't made this day on execution,		3,889 64
		3,792 53
Int. from 18th Aug. 1827, to 11th May, 1829, 1 y. 8 ms. 24 ds.		394 97
		4,186 90
1829—May 11. By am't made on execution this day,		27 55
		4,159 35
Interest from 11th May, 1829, to 11th Nov. 1835, is 6 years, 6 months, (on $3,792 $\frac{53}{100}$)		1,497 07
		5,638 42
Amount of damages and costs upon dissolution of injunction and stay of executions.		
Marshal's half commission for replevying one of the judgments on the 9th of March, 1822,	70 16	
Marshal's commission on staying injunction in May, 1824,	79 00	
Marshal's commission on execution issued 20th June, 1825, and stayed at request of R. Barr, one of the securities,	83 23	
Damages on dissolution of injunction in May, 1825,	746 80	
	979 19	

Amount brought over,		5,638 42
Amount brought over,	979 19	
Clerk's additional fees for issuing executions,	6 76	
		985 95
		$6,624 37

Leaving the above balance against said Brashear on the 11th day of November, 1835.

JOHN H. HANNA,
Commissioner.

And afterwards, to wit: at the May term of the court aforesaid, in the year 1837, came the complainants' counsel, and moved the court to confirm the commissioner's report filed herein.

And on the subsequent day of the term aforesaid, the complainants filed the following exceptions to the commissioner's report, to wit:

Compl'ts Exceptions to Com'rs Report.

Brashear, by his counsel, objects to the report of the commissioner made in this cause, and files the following exceptions, to wit:

1st. The report does not state or shew whether one or both of said judgments were enjoined, nor what amount was enjoined.

2d. The several amounts of $70 16, $79, and $83 23, are improperly charged against Brashear; or, at least, in their amounts, they are erroneous and improper.

3d. The sum of $746 88, charged against Brashear as damages on dissolution of injunction, is excessive, erroneous, and improper.

4th. Brashear has not been credited in said report for a sufficient sum, or so much as he was entitled according to the decision of the Supreme Court, &c. for or on account of the ginseng shipped and sold by the said James Latimer, after the attachment alluded to in said decision.

5th. The sum to be credited to Brashear for said ginseng ought to be credited against the sum enjoined, and not generally against the aggregate amount of the two judgments, as is done in said report.

6th. Brashear is entitled to credit for other payments than those allowed and stated in said report.

7th. The balance reported against Brashear is excessive, and by far greater than is really due.

8th. During the pendency of this suit, large sums have been paid to Leslie Combs, Esq., as attorney, &c., for and on account of said judgments, &c.

For these and other causes and defects, the said Brashear objects and excepts to said report, and prays that it may be set aside or quashed, &c.

CRITTENDEN, *for Brashear.*

Exceptions heard—Recommitted to Comm'r.

And on the same day, came on to be heard complainant's exceptions to commissioner's report, but the court, not being advised, took time, &c.

And afterwards, to wit: on the next day of the term aforesaid, "the court being now sufficiently advised, it seems to the court the report and account of the commissioner *is* erroneous in not allowing to the complainant a sufficient sum for, and on account of, the ginseng shipped and sold by the said James Latimer, after the said attachment sued out by the said West, for the use of Mifflin and others, was levied; and that the sustaining of this exception, and the view the court now has of the case, renders it unnecessary to render any direct decision on the other exceptions. It is ordered, that the matter be recommitted to the master, with instructions to examine and ascertain the value of all the ginseng shipped and sold by Latimer after the levy of said attachment, and the amount of the charges on the same before the sale and shipment, distinguishing this from the value of the article, and that he report a statement thereof, together with the evidence upon which he acts.

Comm'r files Report.

And afterwards, to wit: on the following day of the term aforesaid, came John H. Hanna, the commissioner, and filed his report, which is as follows, to wit:

In obedience to the order of the court, I, as master commissioner, respectfully report:

Commr's Report.

That the value of the ginseng shipped and sold by James Latimer, after the attachment was levied by West for the use of his assignees, was, when shipped on the 11th May, 1809, of the value of $5,599 90; and that the charges thereon, for carriage from Pittsburg to Philadelphia, amounted to $361 20.

The testimony upon which this report to the court is made, is derived from the deposition of James Latimer, taken at the instance of the defendant, West, by direction of your commissioner, and from the account marked B, filed with, and referred to in, said Latimer's deposition. All which is respectfully submitted.

JOHN H. HANNA, *Commissioner.*

Defendants' Exceptions to Commr's Report.

And afterwards, to wit: on the following day of the term aforesaid, came the defendants' counsel and represented to the court, that he had filed exceptions on yesterday to the commissioner's report filed on that day, which he desired might now be noted of record, which is done accordingly.

The counsel for West beg leave to make the following exceptions to the report of the master commissioner, returned in this court on this day, (here referred to marked A.)

1st. Brashear is not entitled to a credit for ginseng sold and shipped by Latimer after the attachments of the assignees of West *was* levied.

2d. The value of the ginseng at the time the attachments of the assignees of West *was* levied, (to wit: 7th April, 1809) and not the time of the shipment, was the date at which the valuation by the commissioner should have been made.

3d. The commissioner has allowed a credit of $5,599 90 cents, when, in fact, the credit should have been only the sum of $2,753 80 cents.

4th. The commissioner has allowed a credit for all the ginseng shipped by the Delaware, when in fact Brashear should only have been allowed a credit for the 57 barrels of ginseng, shipped by the Delaware, valued at $2,753 80.

5th. The value of the ginseng, as fixed by the commissioner, is exorbitant and excessive.

6th. Great injustice has been done the assignees of West, in the report of the commissioner, in not making the credit of Brashear conform to the opinion of the Supreme Court.

7th. Brashear was only entitled to a credit for ginseng shipped and sold on account of Latimer and Redwood, with the assent of West's assignees, which was much less in value than $5,599 90, as reported.

8th. Great injustice has been done the defendants in the said report of commissioner.

9th. The report is contrary to the facts and proofs in the case, and the law thereon.

10th. There is no evidence in the case to authorize the sum or credit allowed Brashear by the commissioner.

It is, therefore, prayed that said report be quashed and set aside.

CATES,
Attorney for Defendants.

Exceptions overruled.

Whereupon came on to be heard the defendants' exceptions, but the court not being advised, took time, &c.

And afterwards, to wit, on a subsequent day of the term aforesaid, "the court being sufficiently advised of and concerning the defendants' exceptions to the commissioner's report; it seems to the court that the commissioner correctly regarded the 11th day of May, 1809, when the ginseng was sold and shipped, in his estimation of the value thereof, but whether or not is not deemed material, because it appears on the proof in the case, and upon which the commissioner acted, that the ginseng was of the same value, at the time the attachment was levied. The exception of the defendants, in this respect, is there-

fore overruled. The matter of the residue of the defendants' exceptions, and also those of the complainant to the former report of the commissioner, is reserved until upon the final hearing.

And thereupon this cause came on upon final hearing; and the argument of counsel being heard and the court sufficiently advised—

Decree.

It seems to the court, on both the report of the commissioner and the proofs in the cause, upon which only he acted, that both the invoices, one of crude and the other of clarified ginseng, of the 11th of May, 1809, *was* shipped and sold by the said Latimer, after the attachment sued out by the said West, for the use of Mifflin and others, was levied, and that the commissioner has correctly estimated the value thereof at the said date, at the sum of five thousand five hundred and ninety-nine dollars and ninety cents, and that the report in this respect is fully supported by the proofs.

It does not appear that the defendants, or either of them, paid to the said Latimer, or otherwise, any part of the charges stated by the said Latimer, in the accounts made part of his depositions, on which the commissioner has predicated the statement of charges in his report. On the contrary, it appears that said charges all constitute and stand as debits against the complainant in the account current between him and said Latimer. It seems to the court that it is not the sum which the said Latimer may have been indebted to the complainant on the accounts or otherwise, at the time of said shipment and sale, and subsequent insolvency of Latimer, but a sum equeal to the amount of the ginseng shipped and sold by Latimer after the said attachment was levied, which the court is instructed by the mandate of the Supreme Court to allow the complainant as a credit on said judgments. It therefore seems to the court that there can be no deduction made from the said sum for or on account of said charges, and that the complainant is entitled to a credit for the full sum of five thousand five hundred and ninety-nine dollars and ninety cents, as a payment made on the said 11th May, 1809.

Touching the application of this credit, it appears to the court that on the 9th day of March, 1822, there being an execution on one of the said judgments in the hands of the marshal, the complainant with surety executed a replevin bond for the amount thereof, including the interest up to that day, about two thousand nine hundred and twenty-two dollars and fifty cents, and the costs of the marshal for taking said bond, seventy dollars sixteen cents, as well as those before incurred, (about sixteen dollars ninety-two cents,) amounting in all to the sum of six thousand five hundred and thirty-seven dollars and thirty-nine cents, payable in two years, with interest on the entire amount thereof, from the date of the bond; and that afterwards, at the May term, 1824, the said proceedings and bond, which are before the court on this hearing, being before the court, an injunction was granted the complainant against all proceedings on said bond, upon condition of his executing a bond with surety to the effect prescribed,

and also against all proceedings upon the other judgment, upon condition that the complainant executed the replevy bond, in the case of the replevy bond, and so obtained an injunction against all proceedings thereon, whereby an execution on the bond, then in the hands of the marshal, was stayed and so returned; but in the other case no bond was executed, and there was no injunction against that judgment. It seems to the court that the plaintiff, in the judgments, did not act against good conscience in pressing an injunction, whereby to obtain, or have secured, at least the sum which it now appears he was entitled to after the deduction of the credit now allowed the complainant, and that he ought not now to be deprived of the benefit of the security he thereby obtained, or be made to suffer the loss of the costs he expended in obtaining it; therefore, so much of the said credit as is equeal to the amount of the judgment for which no replevy bond was given, and which was not enjoined exclusive of the costs, but with the interest thereon up to the 11th day of May, 1809, amounting to the sum of three thousand seven hundred and twenty-nine dollars, forty-six cents, must be applied as a set off and satisfaction of said judgment. It appearing that West recovered by the other judgment more than he was in good conscience entitled to, he must bear his own costs in recovering this judgment; the residue of said credit, being the sum of one thousand eight hundred & seventy dollars and forty-four cents, must be applied as a set off for so much, or as part payment of the said replevy bond, and the judgment for which it was given, and in such manner as to have the same effect as if it had been credited on the bond or note upon which the judgment was recovered as a payment made on the 11th May, 1809, and the judgment had been so rendered; this is accomplished by ascertaining the sum for which the replevin bond would have been taken, had the judgment & execution shewn such credit. Had such a credit appeared, the replevin bond would have been for the sum of three thousand three hundred and forty-four dollars and seven cents; this sum, deducted from the amount for which the bond was taken, leaves a balance of three thousand one hundred and ninety-three dollars and thirty-two cents; this sum must be credited on the bond, and the injunction dissolved for the residue of the amount of said replevin bond.

Touching the damages, it seems to the court that the complainant, having taken out an injunction against all proceedings at law on this judgment, which is now by this application of the credit left unsatisfied, in preference to an injunction against the other judgment, which, in consequence of what had been before acted, had, in the opinion of the court, the preference in the appropriation of the credit, and is now extinguished, he must be subjected to the consequence of its dissolution; the damages must be computed on three thousand seven hundred and ninety-five dollars and seven cents, the principal and interest which was due on the replevin bond on the 4th day of June, 1824, when the injunction was executed, after the deduction of the said sum of $3193 32, appropriated as a part payment thereon;

this gives the sum of three hundred and seventy-nine dollars and fifty cents of damages.

The decree for the damages of ten per cent. on the part of the replevin bond, as to which the injunction was dissolved, being a part of the former decree of this court, which was reversed by the Supreme Court, is by said decree, and according to the mandate of that court, annulled. It does not appear that any part of the amount of these damages has been made by execution, or otherwise paid by the complainant; the proceedings by execution, which seem to be referred to by the commissioner in his former reports, and to which the exceptions of the complainant seem to refer, are not before the court; the record of them is no part of this case; there is no allegation of them in the pleadings by petition, and therefore no credit to which the complainant may be entitled at law for money made by execution, or paid by him to Combs and others on said replevin bond or judgments, is considered or adjudicated upon in this case.

It is therefore decreed and ordered, that the said Francis West, and his trustees, Samuel Mifflin, John Lapseley, and Henry Nixon, and all others, be perpetually enjoined from all proceedings on the said judgment at law, recovered, in the name of said Francis West, against the complainant, Walter Brashear, for the amount of which no replevin bond has been given, and which had not been heretofore enjoined by an interlocutory order of this court.

It is further decreed and ordered, that the said defendants, and all others, be also enjoined from all proceedings on the said replevy bond, executed for the amount of the other judgment by the said Walter Brashear and Robert T. Barr, his security, bearing date the 9th March, 1822, or upon the said judgment as to the said sum of three thousand one hundred and ninety-three dollars and thirty-two cents, and all the interest accrued or to accrue on said part of said bond since the day of its date, and also, costs accrued in consequence of subsequent proceedings by execution to coerce the payment of this part of said bond.

It is further decreed and ordered, that the complainants' injunction as to the residue of the said replevin bond, being the sum of three thousand three hundred and forty-four dollars and seven cents, with interest thereon from the date of the bond, and also, the costs incurred on subsequent proceedings by execution for the collection of this part of said bond, be, and the same is hereby, dissolved.

And it is decreed and ordered, that the said complainant, Walter Brashear, pay to the said Francis West, for the use of Samuel Mifflin, John Lapseley and Henry Nixon, the sum of three hundred and seventy-nine dollars and fifty cents, being the ten per cent. damages on the amount due in equity on the replevy bond when the injunction was granted, and as to which it was dissolved.

It is further decreed and ordered, that the defendants, Francis West and Samuel Mifflin, and John Lapseley and Henry Nixon, pay to the complainant his costs expended in this suit, except so much thereof as was expended in consequence of his asserting and prose-

cuting his claim for a set off and credit for, and on account of, the judgment obtained against him as special bail for Francis West by George Anderson, and after deducting the amount of costs expended by said defendants, in their defence against said claim.

It is further decreed and ordered, that the complainant pay to the said Thomas M. Willing and Henry Nixon, as executors of John Nixon, dec'd, their costs in their defence expended.

And it is further ordered, that John H. Hanna, the commissioner, be allowed fifty dollars, to be paid by the complainant, and to be taxed in the bill of costs against the defendants, West and his trustees.

Appeal granted.

Whereupon, the defendants, by their counsel, prayed an appeal to the Supreme Court of the United States, which is granted upon their entering into bond in the clerk's office, within forty days, with good and sufficient security in the penalty of four hundred dollars, conditioned according to law.

Deposition of James Latimer.

The deposition of James Latimer, of the city of Philadelphia, merchant, a witness produced, sworn and examined on the 16th day of October, A. D. 1833, at the office of the mayor of the city of Philadelphia, in a certain cause depending in the circuit court of the United States in and for the Kentucky district, in which Walter Brashear is compl't, and John Lapseley and others are defendants, which deposition was taken before John Swift, Esq., mayor of the city of Philadelphia, reduced to writing by the deponent in his presence, the said witness having been carefully examined, and cautioned and sworn to testify the whole truth, and having subscribed the testimony by him given. This deposition is taken under the act of Congress, on the part and behalf of the defendants, the adverse party not being present at the taking thereof, nor his attorney; neither the said party nor his attorney being within one hundred miles of the place of caption.

James Latimer, of the city of Philadelphia, merchant, being duly sworn, saith, that he was formerly examined as a witness in this cause; that in such examination he testified, in answer to the 6th interrogatory on the part of the executors of John Nixon, that he did ship part of the ginseng, on his own account, in March, 1809, by brig Growler, for China, before the attachments by Mr. West's ass'ees, or Mr. Nixon's executors were laid, and in May, 1809, shipped the remainder of the ginseng per ship Delaware, on the joint account of myself and Mr. William Redwood; that his attention has been recently called to the subject for the purpose of stating the proportions or amount of ginseng taken by him to his own account before and after the attachments; that he has carefully examined his

books and papers, and from such examination he has refreshed his recollection so as to be able to state that the crude ginseng, and all the clarified ginseng, excepting fifty-seven barrels, amounting, in value, net*t*, to $2,753 $\frac{80}{100}$, were taken by him to account on or before the 28th of March, 1809; and that he, this deponent, advised Dr. Brashear thereof by a letter written to him on that day; that the paper hereto annexed, marked (A,) is a true copy of the letter written by deponent to Dr. Brashear on said day; that there remained in the hands of this deponent of the ginseng of Dr. Brashear only fifty-seven barrels of clarified ginseng at the time the attachments were laid, and that the value of that which so remained was $2,753 $\frac{80}{100}$.

This deponent further states, that the paper writing hereto annexed, marked B, is a just and true and full account or statement of all the ginseng of Dr. Brashear which was in the hands of this deponent, and of the disposition made thereof by this deponent; that the invoices were made out at the time of shipment of the several parcels, but that the quantity taken to account by deponent had been so taken before, as he has already stated. The deponent says, that this deposition is taken in consequence of a requisition of Mr. Hanna, the commissioner appointed by the court.

JAMES LATIMER.

Sworn to and subscribed before me this 16th day of October, A. D. 1835.

JOHN SWIFT, *Mayor.*

Be it remembered, that on the 16th day of October, A. D. 1835, between the hours of 9 A. M. and 12 P. M., at the office of the subscriber, mayor of the city of Philadelphia, personally appeared James Latimer, who being first sworn and cautioned to tell the truth, the whole truth, and nothing but the truth, did testify as is contained in the foregoing deposition, and I further certify, that annexed papers, the one marked A and the other B, are the same referred to in the deposition, and exhibited to me at the time of taking the same.

In testimony whereof I have hereto set my hand and
[L. S.] caused the corporate seal of Philadelphia to be affixed, this 16th day of October, A. D. 1835.

JOHN SWIFT.

Exhibit A.

Copy, Exhibit A.

PHILADELPHIA, March 28th, 1809.

DEAR DOCTOR: I am favoured with yours of 15th and 26th February, both from Lexington, from neither of which does it appear that you have received either of mine, dated in January. After I had settled with *Peters* I found it necessary, and West strongly

urged it on me, to lay an attachment in my own hands to prevent others taking from me that which you intended should first be applied to pay my claim on you. I have since, say early in the month, taken the common ginseng to my own account at 40 p. lb. Some of it is now shipped, and the remainder will soon be weighed, when I will pass the amount to your credit.

Mr. West says he comes in next after me, but until I have your instructions, I shall hold on: but indeed you have been very remiss in not informing me about your ginseng, and generally in not answering my letters. I can do nothing with the clarified from New Orleans, without orders from Hackley and Barr. It came as their property. I wrote them I held it subject to their orders, therefore, until they tell me it is yours, I must consider it as theirs, and be only accountable to them for the *ro*proceeds. I received the other day a parcel of upwards of 9000 lbs. ginseng, sent by Gibson to Guy Bryan here; he gave it up to me upon Gibson's information that it was yours, I paying him all expenses; it had been in his hands six weeks; this I have also taken at 40 cents. You will be satisfied that I have allowed you sufficient; at any rate we shall have no difference about it. No vessel has yet sailed for China. I put this (mine) in a small brig, in which I am concerned, to sail in 2 or 3 days; perhaps one vessel only more may go; the times so critical, and the insurance so high, say 25 p. c. out and home. I could have bought long ago *a* 30 *a* 33, *a* 12 mos. credit. Some of yours is good and some intolerably bad; some of which I must reject, and at least 5 p. siftings. Mr. Allen has received your letter, to which you refer me in yours of the 15th; he has mislaid it, but told me he would hunt it up, and shew it me. I will see him in a day or two, and write you our determination. I confess, for my own part, I am only fearful of the quality. Some this year of yours is very fine, others of it only ordinary; why can it not be uniformly good? A friend of mine from Baltimore, who saw some of yours, when I was starting it, said some he had from Tennessee is worth 50 p. more. Even if your letter of 26th had arrived in time, it would have been impossible to have shipped the ginseng, on your account, as you request no person will take ginseng on freight, Dr. ————, clarified at 50 cts., crude *a* 33; both ———— credit, and both of excellent quality. Your ginseng from New Orleans has not yet come on, nor have I heard a word about it. I am now confined to the house with a bad cold; when I get out I will write you more fully.

Yours truly,

Signed JAMES LATIMER.

To Dr. WALTER BRASHEAR.

I write from the house and from memory. I suppose there is about 17 *a* 18000 lbs. crude ginseng. You will remember that the court is to decide in April whether I am not also obliged to pay the 10 p. allowed by the laws of Kentucky upon returned bills: last accounts from China, ginseng 25 drs. p. punch.

Exhibit B.

Exhibit B.

In May, 1807, shipped per Dorthea to Canton in China, 19 barrels crude ginseng, weight 1,497 lbs. *a* 30 cts. - - - -		449 10
Shipped pr. Growler to Canton 2 hdds. clarified ginseng, weight, 717 lbs. 50 cts.	358 58	
Invoice dated 31st March, 1809.		
24 hhds. crude do. do. 7809 lbs. 45 cts.	3514 05	
24 tierces do. do. 4881 lbs. 40 cts.	1952 04	
		5824 95
Shipped per Delaware to Canton in do.		
Invoice dated 11th May, 1809.		
18 bbls. crude ginseng 2769 lbs.		
16 tierces crude do. 3125		
3 hhds. do. do. 922		
6816 lbs. *a* 40 cts.		2726 40
		9002 45
Taken to his own account, as advised.		
Dr. Brashear p. his letter of 28th March, 1809.		
Deduct charges, - - - -		757 55
		8242 90
May 11, 1809, 57 bbls. clarified ginseng 5747 lbs. *a* 50 cts.	2873 50	
May 11, 1809, shipped per Delaware. Deduct charges,	119 70	2753 80
	N. proceeds	$10996 70

The above charges appear in the account current, formerly furnished under the former commissioners.

J. L.

Appeal Bond.

The following is a copy of the appeal bond, to wit:

Know all men by these presents, that we, Francis West, Thomas Willing and Henry Nixon, executors, John Nixon, and John Lapseley; Samuel Mifflin and Henry Nixon, trustees of Francis West and Owen Glendower Cates, are held and firmly bound unto Walter Brashear in the just and full sum of four hundred dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by the presents. Sealed with our seals, and dated this 24th day of June, 1837.

The condition of the above obligation is such, that whereas, the

above bound Francis West, Thomas Willing and Henry Nixon, executors of John Nixon and John Lapseley, Samuel Mifflin and Henry Nixon, trustees of Francis West, have obtained an appeal from a decree of the eighth circuit court of the United States of America in and for the Kentucky district, wherein the said Walter Brashear was complainant, and the said Francis West, &c., were defendants, to the Supreme Court of the United States.

Now, if the aforesaid Francis West and others shall prosecute said appeal with effect, or, on failure thereof, pay all costs and damages that may be awarded against them, then the above obligation to be void; otherwise, to remain in full force and virtue.

O. G. CATES, [SEAL.]

UNITED STATES OF AMERICA, *8th Circuit Kentucky District, sct:*

I, John Hanna, clerk of the 8th circuit court of the United States of America in and for the Kentucky district, do hereby certify that the foregoing 21 pages contain a full, true and complete transcript of the record and proceedings had on the mandate from the Supreme Court, between the parties therein mentioned, and that the appeal bond is truly copied.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 28th day of June, A. [SEAL.] D. 1837, and in the 61st year of our Independence.

JNO. H. HANNA.